IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

Crl.MC.No. 1707 of 2004-C

CC.325/2003 of CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM
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PETITIONER: ACCUSED
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1. SHAJAN THOMAS S/O. THOMAS,
KANNAPPILLY VEEDU, NEAR GOVERNMENT HOSPITAL
IV WARD THURAVOOR VILLAGE, ALUVA THALOOK,
ERNAKULAM DISTRICT, REGIONAL MANAGER SAIDEEP
FEEDS PVT.LTD., BANGLOOR (ACCUSED NO.1)

2. NANDAKUMAR S/O. GOPALAKRISHNAN,
NO.20 III WARD MAIN, TATA FORM,
KASAVAKUDI DESAM, BANGLOOR CORPORATION,
BANGALOOR EMPLOYED IN VAISYA BANK
(ACCUSED NO.2)

3. MURALEEDHARAN S/O. PADMANABHAN,
PATTATHANAM VEEDU, BAKKAL CHERRY,
PALLIKKARA VILLAGE, HOSDURG TALUK
KASARKODU DISTRICT (EMPLOYED IN VAISYA BANK)
(ACCUSED NO.3)

4. M.K.RAMACHANDRAN
S/O. KASTHOORA RANGA SHETTY, NO.14/1 BULTEBIL ROAD
BASARAKUDI DESAM, BANGLOOR CORPORATION BANGLOOR
DISTRICT, BOARD MEMBER VAISYA BANK
(ACCUSED NO.4)

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE

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1. PRASAD S/O. SUJITH SIVARAMA PILLAI,
FLAT NO.208, KERAL STATE HOUSING BOARD NEAR
UPASANA HOSPITAL CANTONMENT NORTH WARD,
EAST VILLAGE, KOLLAM (DE-FACTO COMPLAINANT)

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADV. DR.K.P.KYLASANATHA PILLAY
SRI.ARUN.B.VARGHESE
SMT.SREEDEVI KYLASANATH
SMT.S.PREETHA
SRI.T.P.DEYANANTHAN
R2 BY PUBLIC PROSECUTOR MR. PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C.NO.1707 of 2004

DATED THIS THE 30TH DAY OF JANUARY 2007

ORDER

The petitioners, who are the accused in C.C.No.325/2003 in the file of the Chief Judicial Magistrate Court, Kollam with respect to the offences under Sections 448 and 452 read with Section 34 of the Indian penal Code, have sought for getting the proceedings quashed. It is submitted that the complaint filed earlier before the court and forwarded to the police under Section 156(3) Cr.P.C was referred after investigation. Thereafter, the complainant/1st respondent has filed the protest complaint which has been taken cognizance of by the court below. It is submitted that the first petitioner is the Regional Manager of the company, 2nd petitioner is the Branch Manager of the Vaisya Bank at Bangalore, 3rd petitioner is the Branch Manager of the Vaisya Bank at Hosdurg and the 4th petitioner is the Director Board member of the Vaisya Bank and the Proprietor of Saideep Feeds Pvt.Ltd. Bangalore. It is the case of the petitioners that

the complainant was appointed as the C & F Agent of the Company with respect to Kollam District and that cattle feed was supplied to the complainant during the period from 12-8-1999 to 15-9-2000 and an amount to the tune of Rs.6,89,234/- that was due was misappropriated by the complainant. Hence, one Mr. Prathapkumar, Director, Saideep Feeds Pvt.Ltd.had initiated prosecution against the complainant for the offences under Sections 409 and 420 of the Indian Penal Code vide Crime No.78/2001 at J.J.Nagar police station at Bangalore. F.I.R. has been registered and the A.S.I.of J.J.police station with the warrant had reached Kollam for arresting the complainant and as the complainant was absconding, he could not be arrested. It is the case of the petitioners that a false case has been lodged against the petitioners only to stall the proceedings pending against the complainant at the Bangalore court.

The first respondent/complainant has filed a counter statement denying the allegations. According to him, the petitioners/accused had trespassed into his house and confined, abused and insulted him consequent on receipt by the company of the lawyer notice sent by him demanding the payment of the

amount due towards his commission for the sale of the cattle feed as per the agreement executed in between the company and the complainant. According to the complainant, it is only on account of the grouse that the petitioners entertained on receipt of the lawyer notice that they trespassed into his house, threatened him etc.on 28-2-2001 at about 8.50 p.m. According to him, a sum of Rs.17,02,407/- is due to him towards commission for the sale of the cattle feed.

On a consideration of the documents produced in the matter that consisted of the copy of the F.I.R., refer report, protest complaint, copy of the F.I.R registered at Bangalore and the report of the A.S.I.who came out to Kundara to arrest the accused and documents produced by the complainant, i.e. copy of the lawyer notice, postal receipts and a copy of the complaint, I find that the allegations in the protest complaint are lacking in details. The allegation in the protest complaint is that the accused/petitioners introduced themselves and trespassed into his house, stopped him and threatened him that he will be done away with. It was pointed out by the counsel for the petitioners that the 4th petitioner/4th accused is the Director Board member

of Vaisya Bank, which is a scheduled Bank, and petitioners 2 and 3 are the Managers of the Bank and the first petitioner is the Regional Manager of the Company. The contention that just on account of sending a lawyer notice they have trespassed into the house and committed the offence, it is pointed out, cannot be believed. Counsel has also relied on Section 95 I.P.C. It is brought to the notice of this Court that as per the allegations in the complaint itself it is admitted that there was commercial transaction between the 1st and 4th petitioner on the one hand and the complainant on the other. Hence to demand payment of amounts due if the petitioners had gone to the house of the complainant, it cannot be treated as trespass and further the details of the allegation that he was confined or assaulted so as to attract the offences alleged is not detailed. According to the petitioners, an amount of Rs.6,89,234/- is due from the complainant. It is also pointed out that as per the refer report of the police the petitioners had only gone to the shop of the complainant and not gone to the house of the complainant. Of course, the complainant/respondent has produced the copy of the sworn statement of an alleged witness. On a perusal of the

same, I find that he has only mentioned that he heard loud sounds and heated arguments and threat. The details are not deposed to by the above witnesses.

In the circumstances I find that the allegations made in the protest complaint are not that of a serious nature and Section 95 I.P.C.is squarely attracted. The proceedings initiated appears to be a counterblast to the steps taken to realise the amounts due. Hence, the proceedings pending in C.C.No.325/2003 in the file of the Chief Judicial Magistrate Court, Kollam is herewith quashed. The Crl.M.C.is allowed.

K.R.UDAYABHANU, JUDGE

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